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| 09/720,523 | 05/02/2001 | Rudolf Ritter | 236088US6 PCT | 1568 |

22850 7590 08/14/2007
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

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| EXAMINER |
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FADOK, MARK A

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| ART UNIT | PAPER NUMBER |
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3625

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| NOTIFICATION DATE | DELIVERY MODE |
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08/14/2007

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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oblonpat@oblon.com
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Office Action Summary

Application No.

09/720,523

Applicant(s)

RITTER, RUDOLF

Examiner

Mark Fadok

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-44 is/are pending in the application.
- 4a) Of the above claim(s) 21,22,26-31,34 and 36-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-25,32,33,35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

The examiner is in receipt of applicant's response to office action mailed 2/23/2007, which was received 5/23/2007. Acknowledgement is made to the amendment to claims 21,22,32,35, cancellation of claims 1-20, withdrawal of claims 21,22,26-31,34,36-38 and the addition of claims 39-44. The examiner has carefully considered applicant's amendment and remarks but does not find them to be persuasive. Therefore the previous office action modified as necessitated by amendment follows:

Interview

The examiner contacted Mr. Christopher Ward on 7/30/2007 to discuss a proposed amendment that the examiner offered to search as potential allowable subject matter. The examiner again contacted Mr. Ward on August 3, 2007 to inquire as to the response, Mr. Ward indicated that no response was received from the applicant at that time. The examiner noted that a final would be sent. The proposed amendment was as follows: In claim 32, line 4 after the term "sales module" insert--the sales module functioning as a distinct central entity from the multiple vendors--. This change is considered necessary to distinctly point out the sales module cannot be located at the vendors location. A proper search will be conducted if the proposed changes are incorporated.

Election/Restrictions

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Newly submitted claims 39-44 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The claims are limited to only one vendor.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 39-44 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Examiner's Note

Examiner has cited particular columns and line numbers or figures in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23,25,32,33,34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ali-Vehmas et al (US 6,035,189) in view of Morrill, Jr (US 5,991,749) and Further in view of Sehr (6,999,936).

In regards to claim 32, Ali-Vehmas discloses a method for selling products over a mobile radio network, the mobile radio network including a plurality of participants and being coupled to a sales module, comprising:

Ali-Vehmas teaches storing offers at a central location (col 5, lines 15-35), and providing information such as product and quantity information (col 7, lines 25-27).

Applicant may argue that the information is not stored on the sales module, but this is not specifically claimed. Further, applicant's specification page 7 states that the information is stored either the same computer (sales module) or on another computer accessible by the sales module (possibly the vendor). Therefore Ali-Vehmas teaches this feature.

transmitting via a transmission channel an offer to the plurality of participants in of the mobile radio network (col 7, lines 15-30);

receiving an order data in the sales module from a participant of the plurality of participants via the mobile radio network in response to the transmitting of the offer, the order data including a request for a product of the specified products and an

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identification of the participant (It is clear that Ali-Vehmas teaches receiving such a request and then passes it along to the vendor, col 5, lines 60-65);

confirming by the sales module that the limited available number of the specified products is greater than zero (the sales module once again processes this information and transmits it through to the user col 7, lines 25 and 26);

Ali-Vehmas teaches the use of an intelligent cell phone to communicate reservation of products such as event tickets and a means for payment of such services or products, but does not specifically mention that a token exchangeable for the product is forwarded to both the vendor and the participant. Morrill teaches an order and payment process that sends a confirmation including an authorization code that consummates the sale purchase of goods or services (FIG 1A-1E). It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in Ali-Vehmas a token exchangeable for the product is forwarded to both the vendor and the participant, because this will assure that the transaction has been properly authorized and completion of the transaction is confirmed (Morrill, col 1, lines 55-60).

The combination of Ali-Vehmas and Morrill, Jr. teach arriving at a sold out condition and delivering a electronic voucher to a cell phone, but does not specifically mention adjusting the quantity information in the sales module based on the token. Sehr teaches reducing the availability of seating based on the distribution of an electronic ticket (col 8, lines 30-60). It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in the combination of Ali-Vehmas and Morrill, Jr. reducing the availability of seating based on the distribution of an electronic ticket as

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taught by Sehr, because this would keep track of the sales and assure that a seat that is reserved is not given to another, thus minimizing frustration of the consumer arriving at a venue to find someone else in the seat.

In regards to claim 23, the combination of Ali-Vehmas and Morrill teach wherein the order data includes a requested quantity of the products (col 5, lines 65-67).

In regards to claim 25, the combination of Ali-Vehmas and Morrill teach wherein the token includes a delivery number (Morrill, FIG 1E).

In regards to claim 33 and 34, the combination of Ali-Vehmas and Morrill teach wherein the product includes at least one of goods and services (col 5, lines 64-67).

In regards to claim 35, the combination of Ali-Vehmas and Morrill teach wherein, the text messaging protocol is a SMS protocol, the broadcasting includes transmitting the offer information in multiple SMS short messages to the plurality of participants, and the transmitting of the token to the participant includes transmitting the token in a SMS short message to a mobile communications device of the participant (col 7, lines 5-35).

Response to Arguments

Response to Arguments

Applicant's arguments filed 5/23/2007 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., having the sales module provide functionality as noted on page 12 and 13 of applicants response) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims (see response supra to claim 32). See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that Morrill is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Morrill is in the same field of endeavor, that being telephony product ordering.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **571.272.6755**. The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Jeff Smith** can be reached on **571.272.6763**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

571-273-8300

[Official communications; including

After Final communications labeled

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"Box AF"]

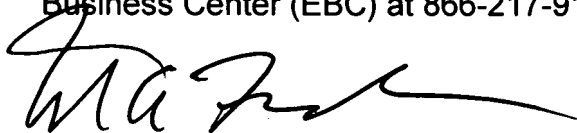
For general questions the receptionist can be reached at

571.272.3600

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A handwritten signature in black ink, appearing to read 'Mark Fadok', with a stylized flourish at the end.

Mark Fadok

Primary Examiner